For all these reasons, the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Oehlers & Choa; Director of Legal Aid.*

ANG BOCK SENG v. MURUGIAN VALAMBALL

[A.C.J. (Winslow J.) October 21, 1969]

[Singapore—District Court Civil Appeal No. 16 of 1969]

Landlord and Tenant — Recovery of possession — Greater hardship — Application by landlord on ground that he requires premises for occupation by himself — Whether greater hardship would be caused to landlord or tenant — Control of Rent Ordinance (Cap. 242), s. 15 (1) (j).

This was an appeal against the judgment of the learned district judge giving the respondent landlord possession of certain premises at Buffalo Road of which the appellant was a monthly tenant. The ground on which the claim for possession was based was under section 15(1) (j) of the Control of Rent Ordinance, in that the landlord required the premises for occupation by herself or her family. In this case the landlord had given evidence to show that she required the premises for her own occupation. She had retired from Government service and had to vacate Government quarters; subsequently she obtained a Housing Board flat but she had been asked to vacate it as she had failed to disclose the fact that she was the owner of the house at Buffalo Road. She had earlier sold another house belonging to her to pay off the mortgage on that house.

Held, dismissing the appeal: (1) the respondent landlord in this case had discharged the onus of proving reasonable requirement of the premises for occupation by her and her family;

(2) in the circumstances of this case the landlord had acted reasonably in selling the other house belonging to her and in any case it was for the tenant to show greater hardship in this respect by showing that the landlord's sale was unreasonable and the tenant had failed to do so;

(3) it had not been shown that the district judge misdirected himself in law or on facts.

Cases referred to:—

(1) *Arathoon Sons Ltd.* v. *Buan Lee Seng Ltd.* [1950] M.L.J. 307.

(2) *Kerrigan* v. *Nelson* [1946] S.C. 388.

DISTRICT COURT CIVIL APPEAL

J.B. Jeyaretnam for the appellant.

M.N. Samy for the respondent.

Cur. Adv. Vult.

Winslow J.: This is an appeal against the judgment of the learned First Civil District Judge of 1st August, 1969 when he found in favour of the respondent/plaintiff on her claim for possession of No. 14 Buffalo Road of which the appellant/defendant was a monthly tenant.

The sole ground on which the claim was based was under section 15 (1) (j) of the Control of Rent Ordinance (Cap 242) the material portions of which are as follows:—

> "where the landlord of the premises reasonably requires the same for occupation by himself or any member of his family . . . and the tenancy has been determined by not less than one year's notice to quit and there has been no change by purchase in the ownership of the premises within one year next preceding the date of such notice."

The onus is of course on the landlord to show that he reasonably requires the premises as aforesaid. But, the proviso to this paragraph states that an order or judgment shall not be made or given if the court is satisfied that having regard to all the circumstances of the case, including the question whether other accommodation is available for the landlord or the tenant, greater hardship would be caused by granting it than by refusing to do so and it is common ground that the onus of so satisfying the court lies on the tenant.

There were accordingly two matters to be considered by the district judge. First of all, he had to be satisfied that the respondent/plaintiff reasonably required the premises in question for occupation by herself or any member of her family at the relevant time, i.e., the time of the hearing. If authority is required for this proposition, it will be found in *Megarry's* "The Rent Acts" 10th Edition at page 284. The hearing of this case commenced on 4th November, 1968 after which date it was adjourned for further hearing from time to time till 11th February, 1969 and then further adjourned from that date till 28th February, 1969 when the court reserved judgment and, as I have said earlier, that judgment was delivered on 1st August, 1969.

The second matter to be decided, assuming that the trial judge was satisfied that the respondent/plaintiff had discharged the burden on her of proving that she reasonably required the premises during the hearing of this case, was the question of greater hardship to which I have earlier referred. The circumstances to be considered in deciding whether the appellant/defendant, i.e., the tenant in this case, has discharged the burden on him of proving greater hardship to himself, are also, according to *Megarry* at page 294, those existing at the time of the hearing. *Megarry* further states that, in considering the landlord's circumstances, it will often be irrelevant to consider past events such as his sale of another house which would have provided an alternative home for him and, on the English authorities, *Megarry* concludes that the court is entitled to take into account in considering the tenant's circumstances, past events such as his failure

to accept other accomodation in the past or to try and find other accommodation.

Counsel for the appellant/defendant contended that an appellate court could intervene and set aside the decision of the court below if the latter, in the exercise of its discretion, proceeded on wrong assumptions.

With regard to the first matter, he contended that the district judge had, in the first place, wrongly assumed that the Housing and Development Board would not have allocated a flat to the respondent/plaintiff if, as she claimed in her evidence, she had disclosed that she was the owner of No. 14 Buffalo Road and, secondly, that she had been evicted from that flat during the trial because she was, in fact, the owner of No. 14 Buffalo Road.

Perhaps these conclusions could have been more happily worded because from Exhibit P5 (a letter from the Housing Board dated 16th December, 1968) it is clear that she was being asked to vacate because she had failed to disclose in her application form that she was, in fact, owner of No. 14 Buffalo Road. It seems to me, however, that there was material before the district judge on which he could have found, as he did. Further, from the agreed document, Exhibit P9, which was placed before me for consideraton, it is clear that if the occupant of a Housing Board flat owns a house or land, he will be required to vacate it. I am not therefore disposed to interfere with the judgment of the district judge on this ground alone since his conclusions on these points are not unwarranted or unreasonable or without foundation.

Again with regard to the first matter, it was contended on the tenant's behalf that the landlady did not, in fact, reasonably require the premises for occupation either by herself or by members of her family and that her conduct throughout from 1966 onwards, when she issued a notice to quit to the tenant, showed lack of good faith. The district judge who saw and heard the parties found as a fact that her *bona fides* was not, in his view, questionable. This is not a case where, as in *Arathoon Sons Limited v. Buan Lee Seng Limited*,[1] doubt was cast upon the *bona fides* of the landlord because he had previously failed to succeed in selling the premises in question to the tenant at the much higher price which he demanded.

No such question arises in the current appeal. The landlady at the time of the hearing had no house in which to live. She had not put any pressure on the tenant in any way. She resorted to the means available to her under the law for recovery of possession. She had a right to protect her own interests and to promote her own welfare, being as she was in 1966, on the eve of retirement from Government service as an amah employed at the Kandang Kerbau Hospital. She knew that she had to vacate Government quarters after her retirement and she had nowhere else to go. In desperation, she applied to the Housing Board for a one-room flat which she eventually obtained however unsuitable it was, but in the course of the hearing, the Housing Board evicted her for making a "false declaration" in that she failed to disclose her ownership of No. 14 Buffalo Road. I fail to see in what way her conduct in this respect can be said to have been questionable in so far as it related to the tenant, however reprehensible her failure to disclose such ownership may have appeared to the Housing Board.

It should be borne in mind that she claimed that she sold her other house, No. 14 Rappa Terrace, in May 1966 to pay off a mortgage. On 2nd June 1966 she applied to the Housing Board for a flat. On 9th June 1966 she gave the appellant/defendant the required notice to quit. The sale of that other house was apparently completed only in September 1966. Her retirement took effect on 31st December 1966 and she was asked to leave the Hospital Quarters after retirement which she did on 30th July 1967. On 27th March 1968 she issued the present summons against the appellant/defendant. During the course of the hearing on 19th November 1968 the Housing Board gave her a notice to quit which expired on or about 23rd December 1968. In making a claim under the summons for recovery of the premises in question she was merely attempting to seek a remedy which the law provides for people in her situation.

She threw herself on the indulgence of the court and the court decided in her favour by holding that she reasonably required the premises at the relevant time. The court even went so far as to hold that even at the date of the issue of the summons, i.e., in March 1968, she could not be said to have been in any way unreasonable. An attempt was made to suggest that there was something very sinister in her having sold the other house, which she owned, in 1966. For that she gave an explanation. She had a mortgage to discharge and before her retirement from the service of the Government, she was anxious to put her own affairs on a more stable footing. I am satisfied that there was ample material before the district judge on which he could find in her favour that, having regard to all the circumstances, including her financial position, she reasonably required the premises within the meaning of section 15 (1) (j).

I should however like to make a few observations about the sale of the other house by the landlady in 1966. It was contended by counsel for the tenant that, by doing so, she had placed herself unreasonably in a situation whereby she had no alternative except to proceed against his client for its possession and that for this reason she could not be said to have been reasonably requiring the said premises within the meaning of section 15(1)(j).

Counsel did not appear to be sufficiently positive as to the stand he took with regard to her actions in connection with the other house. He seemed to combine an allegation of some element of lack of *bona fides* on her part with a suggestion that her conduct in this respect was at least suspect to the extent that she did not reasonably require the premises for her own occupation or that of her immediate family.

In my view, there can be little doubt that, so far as the onus of proving reasonable requirement as aforesaid is concerned, she has clearly shown that she not only reasonably required the premises but that she was most urgently in need of them as the district judge found.

Supposing one looks at the matter from another angle and considers what her position would have been if she had not sold No. 14 Rappa Terrace in 1966 and if she had not paid off the mortgage, would she necessarily have been able to live in it after her retirement at the end of 1966 or at any later date? One does not really know what the mortgagee would have done. Would he have stood by and done nothing and allowed her quiet enjoyment? Is she to be criticised for her action in selling off that house in order to pay off the mortgage? She was only a hospital amah entitled to receive a pension of $46.32 p.m. on retirement. Was she not entitled to take the action which she did in order to safeguard her position? Can it be said that she did not reasonably require the premises in question in 1968 on the ground that she acted unreasonably in 1966 in attempting to stabilize her own financial affairs? Was she bound to consider the interests of the tenant of No. 14 Buffalo Road alone, in isolation from her own problems? These are questions which, in my view, required, if relevant, to be considered more properly in relation to the onus on the tenant of showing greater hardship to himself once the court was satisfied with her *bona fides* in seeking recovery.

In *Kerrigan v. Nelson*,[2] Lord President Normand held that the circumstances relating to the sale of another house previously by the landlord were irrelevant to the question in issue as to greater hardship and that it was unreasonable to say that the hardship which the landlord was suffering at the time of the hearing was largely created by his own act. The Lord President further went on to say that if it was relevant to inquire whether the sale of the other house was a reasonable step to take he would without hesitation answer that it was an eminently reasonable action.

If it were necessary for me so to decide in the current appeal I would similarly say that the landlady herein took what seems to me, and no doubt seemed to the district judge, a most reasonable action in the face of the mortgage which affected the other house and in the light of her impending retirement in less felicitous financial circumstances. In any case it was for the appellant/defendant to show greater hardship in this respect by showing that her sale was unreasonable and he has failed to do so.

On the question of greater hardship, the district judge had before him the evidence adduced on both sides. He had no hesitation in finding where the greater hardship lay. With his finding I cannot disagree. There was ample evidence — in fact, it came from the defendant's own mouth — that he had in fact been offered a two-room flat by the Housing Board which he had refused. The district judge found that the tenant had failed to discharge the onus of proving greater hardship and I cannot say that he was wrong. In fact there is authority for saying that if in drawing up a "statutory balance-sheet" there is some evidence of hardship on each side, the decision of the trial judge is final, in the sense that an appellate court would be slow to interfere, since this is primarily a question of fact. (See *Megarry, op. cit.* at page 296/297). It has not been shown to me that the district judge misdirected himself on law or acted on facts of which there was no evidence.

The appeal is accordingly dismissed with costs.

Appeal dismissed.

Solicitors: *J.B. Jeyaretnam & Co.; M.N. Samy.*